

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|--------------------------------|
| In the Matter of |) | |
| |) | |
| Clear Channel Communications, Inc. |) | File No.: EB-08-IH-1738 |
| |) | NAL/Acct. No.: 201232080015 |
| Ultimate Parent Company of |) | FRN: 0005780325 |
| |) | |
| AMFM Broadcasting Licenses, LLC |) | |
| Licensee of Stations KOST(FM), KHHT(FM), |) | Facility ID Nos. 34424, 35022, |
| KBIG-FM, and KYSR(FM), all of Los Angeles, |) | 6360, and 36019 |
| California; |) | |
| |) | |
| Citicasters Licenses, Inc. |) | |
| Licensee of Station KIIS-FM, Los Angeles, |) | Facility ID No. 19218 |
| California; |) | |
| |) | |
| Capstar TX LLC |) | |
| Licensee of Station KFI(AM), Los Angeles, |) | Facility ID No. 34425 |
| California |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 19, 2012

Released: January 19, 2012

By the Acting Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability For Forfeiture (“NAL”), we find that Clear Channel Communications, Inc. (“Clear Channel” or “Licensee”), the ultimate parent company of the licensees of commercial radio stations KOST(FM), KHHT(FM), KBIG-FM, KYSR(FM), KIIS-FM, and KFI(AM), Los Angeles, California (the “Stations”),¹ apparently willfully violated section 73.1216 of the Commission’s rules by failing to “fully and accurately disclose the material terms of a contest.”² Based upon our review of the facts, we find the Licensee apparently liable for a monetary forfeiture in the amount of twenty two thousand dollars (\$22,000).

¹ Stations KOST(FM), KHHT(FM), KBIG-FM, and KYSR(FM) are licensed to AM/FM Broadcasting Licenses, LLC; Station KIIS-FM is licensed to Citicasters Licenses, Inc.; and Station KFI(AM) is licensed to Capstar TX LLC. At the time of the complaint, the licensee of KFI(AM) was Capstar TX Limited Partnership. On December 18, 2009, the Commission approved the assignment of Station KFI(AM)’s license from Capstar TX Limited Partnership to Capstar TX LLC (File No. BALH-20091202AIC), which was consummated on December 31, 2009. At the time of the complaint, the licensee of KIIS-FM was Citicasters Licenses, L.P. On December 9, 2008, the Commission approved the assignment of Station KIIS-FM’s license from Citicasters Licenses, L.P. to Citicasters Licenses, Inc. (File No. BAL-20081201DGA), which was consummated on December 31, 2008.

² 47 C.F.R. § 73.1216.

II. BACKGROUND

2. The Commission received a complaint on July 25, 2008, alleging that Clear Channel failed to conduct its “Chevy” contest (the “Contest”) in accordance with its advertised terms and the Commission’s rules.³ Specifically, the complainant alleges that Clear Channel conducted a Contest over the Stations in which listeners were invited to prepare and submit video commercials for Chevrolet in an effort to win the prize of an automobile.⁴ The complainant further alleges that the Contest was rigged because the prize was awarded to a friend or family member of an employee of the Licensee and that the winning video was submitted after the Contest submission deadline.⁵

3. In response to the Complaint, the Enforcement Bureau (“Bureau”), by letter dated September 23, 2008, inquired of Clear Channel concerning these allegations.⁶ Clear Channel responded on October 30, 2008.⁷ The Bureau sent a further letter of inquiry to Clear Channel on November 25, 2009,⁸ to which it responded on December 17, 2009.⁹ In its LOI Response, Clear Channel denies the allegation that the Contest was rigged and explains that, although the prize was awarded to a friend of one of its employees, there were no irregularities involved and the selection was in accordance with the Contest rules.¹⁰ In addition, Clear Channel states that no videos were submitted after the Contest submission deadline.¹¹ Finally, throughout its LOI Response, Clear Channel claims that the Contest was conducted entirely online.¹²

III. DISCUSSION

4. Under section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with

³ See complaint dated July 25, 2008, IC Number 08-R1037916 (“Complaint”).

⁴ See *id.*

⁵ See *id.*

⁶ See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Clear Channel Communications, Inc., dated September 23, 2008 (“LOI”).

⁷ See Letter from Andrew W. Levin, Esq., Clear Channel Communications, Inc., to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated October 30, 2008 (“LOI Response”). In a letter accompanying its LOI Response, Clear Channel requested, pursuant to 47 C.F.R. § 0.459, that the Commission afford confidentiality to certain documents included in its LOI Response that contain proprietary information. See Letter from Tom W. Davidson, Esq., Akin Gump Strauss Hauer & Feld, LLP, Counsel to Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 30, 2008. Because this *NAL* does not disclose such information, we need not rule on the confidentiality request. Unless and until we so rule, we will honor Clear Channel’s request for confidential treatment of these documents. See 47 C.F.R. § 0.459(d)(1).

⁸ See Letter from Kenneth M. Scheibel, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Communications, Inc., dated November 25, 2009 (“Further LOI”).

⁹ See Letter from Tom W. Davidson, Esq., Akin Gump Strauss Hauer & Feld, LLP, Counsel to Clear Channel Communications, Inc., to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated December 17, 2009 (“Further LOI Response”).

¹⁰ See LOI Response at 11, 14-15.

¹¹ See *id.* at 11.

¹² See *id.* at 2-6.

any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹³ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁴ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the section 503(b) context.¹⁶ The Commission may also assess a forfeiture for violations that are merely repeated and not willful.¹⁷ “Repeated” means that the act was committed or omitted more than once or lasts more than one day.¹⁸ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.¹⁹ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²⁰ As described in greater detail below, we conclude under this procedure that Clear Channel is apparently liable for a forfeiture in the amount of twenty two thousand dollars (\$22,000) for its apparent willful and repeated failure to fully and accurately disclose the material terms of its Contest.

5. Under section 73.1216 of the Commission’s rules, a broadcast licensee “that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest.”²¹ Material terms, among other things, include any eligibility restrictions, means of selection of winners, and the extent, nature and value of prizes.²²

6. We find that Clear Channel apparently violated section 73.1216 of the Commission’s rules by failing to fully and accurately disclose the material terms of the Contest in the method prescribed by the Commission’s rules. Clear Channel asserts that the Contest “was conducted on the Station Websites, and not as an over-the-air contest.”²³ It acknowledges, however, that the Stations broadcast advertisements for the Contest.²⁴ Clear Channel further acknowledges that its Contest rules were not

¹³ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁸ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁹ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁰ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

²¹ See 47 C.F.R. § 73.1216.

²² See *id.*, nn. 1(b)-2.

²³ See LOI Response at 3, 5-6 & Exhibit I. The six Stations are KFI(AM), KOST(FM), KHHT(FM), KIIS-FM, KBIG-FM, and KYSR(FM).

²⁴ See *id.* at 6.

broadcast, but instead were made available via the Stations' websites.²⁵ By asserting that the Contest was conducted "on the Station websites," Clear Channel appears to imply that the Contest was not subject to the Commission rule's requirements, or that, alternatively, its method of disclosure was otherwise mitigating or exculpating. The Commission, however, has previously found a licensee liable under section 73.1216 in a case where the licensee promoted its contest through broadcast even though the contest itself was conducted principally through its website.²⁶ Thus, Clear Channel's broadcast promotion of the Contest renders it fully subject to the Commission's rule.²⁷ Moreover, the Commission has found that licensees cannot avail themselves of alternative non-broadcast announcements to satisfy the requirement that they accurately announce a contest's material terms.²⁸ The Commission's rules clearly provide that "[t]he material terms should be disclosed periodically *by announcements broadcast on the station* conducting the contest."²⁹ The Commission's rules provide that while disclosure by non-broadcast means (such as on a website) can be considered in determining whether adequate disclosure has been made, any non-broadcast disclosures must be "[i]n addition to the required broadcast announcements" and cannot substitute for them.³⁰ Accordingly, we find that Clear Channel's failure to broadcast the material terms of the Contest constitutes a violation of section 73.1216.

7. In addition, we find that Clear Channel violated section 73.1216 by failing to accurately disclose its Contest's material terms by providing conflicting information to listeners as to when the submissions were due.³¹ Specifically, we note that the Contest Period is defined in paragraph three of the Stations' Official Contest Rules as encompassing the period from February 11, 2008, to March 21, 2008.³² Further, paragraph seven of the Official Contest Rules stipulates that "[a]ll [s]ubmissions . . . must be received by the close of the Contest Period."³³ This information conflicts temporally with the information provided in paragraph nine of the rules, which provides that "[o]n or about March 10, 2008[,] a panel of impartial judges shall consider all submissions received by the Contest deadline (as defined herein), and select no less than two (2) and nor [sic] more than twenty (20) [f]inalists" which will be posted on the Stations' websites for the purpose of allowing listeners to vote "for the best of the

²⁵ See *id.*

²⁶ See *AMFM Broadcasting Licenses, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1529 (Enf. Bur., Investigations & Hearings Div. 2009) (rejecting Clear Channel's argument that the contest in that case was conducted solely via the Station's website when on-air announcements were also made) ("*AMFM Broadcasting*").

²⁷ See 47 C.F.R. § 73.1216 ("[a] licensee that *broadcasts or advertises information* about a contest it conducts shall fully and accurately disclose the material terms of the contest . . .") (emphasis added); see also *AMFM Broadcasting*, 24 FCC Rcd at 1532, para. 8.

²⁸ See *AK Media Group, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 7541, 7543 (Enf. Bur. 2000) (finding contest rule violation for failure to broadcast a contest's material term and holding that posting rules at the station and on a website do not suffice to satisfy rule); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 2734, 2735 (Enf. Bur. 2000) (finding contest rule violation for failure to broadcast a contest's material term and holding that posting rules at the station's website, standing alone, does not satisfy rule's requirements) ("*Clear Channel Broadcasting*").

²⁹ See 47 C.F.R. § 73.1216 n.2 (emphasis added).

³⁰ See *id.*

³¹ See LOI Response & Exhibit E ("Official Contest Rules").

³² See LOI Response & Exhibit E at 1.

³³ See LOI Response & Exhibit E at 3.

[f]inalists” during the period from March 12 to March 21, 2008.³⁴ Thus, there is a discrepancy as to whether the deadline for submissions was March 10 or March 21, 2008, that may have confused listeners and Contest participants.

8. Finally, with respect to the Complainant’s allegation of contest rigging,³⁵ we are persuaded that there were no violations of the pertinent statute, 47 U.S.C. § 509.³⁶ Clear Channel submitted evidence that credibly refutes these allegations.³⁷ As the record reflects, the ultimate winner was selected by audience and website viewer vote, not by the Licensee’s selection, which undermines the complainant’s charges of manipulation.³⁸ Thus, we are persuaded that no rigging occurred in this instance.

9. Based upon the evidence before us, and in view of the applicable law and Commission precedent, we find that Clear Channel apparently willfully violated section 73.1216 of the Commission’s rules. The Commission’s *Forfeiture Policy Statement* and section 1.80 of the Commission’s rules specify a base forfeiture amount of four thousand dollars (\$4,000) for each violation of section 73.1216.³⁹ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in section 503(b)(2)(E) of the Act and section 1.80 of the Commission’s rules,⁴⁰ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴¹ We believe that the substantial revenues of Clear Channel⁴² and its previous violations of Commission

³⁴ *See id.* Further compounding this confusion is the fact that “Contest deadline” is not defined in the Official Contest Rules.

³⁵ The complainant alleged that the Contest prize was awarded to a friend or family member of an employee of the Licensee, and that the winning video was submitted after the Contest submission deadline, but provided no evidence of rigging. *See* Complaint.

³⁶ 47 U.S.C. § 509 (Prohibited Practices in Case of Contests of Intellectual Knowledge, Intellectual Skill, or Chance).

³⁷ *See* LOI Response at 3-4 & Exhibit E - The Chevrolet “Make Your Own Commercial” Contest Official Rules (“Official Contest Rules”), and Further LOI Response at 4 & Exhibit 1. Clear Channel’s responses are supported by sworn declarations of Jim Murphy, Vice President, Business Affairs, Clear Channel Los Angeles; Jeff Thomas, Vice President, Director of Sales, Clear Channel Los Angeles; Michele Laven, Director of Integrated Media, Clear Channel Los Angeles; and Noah Caldwell, Integrated Media Designer, Clear Channel Los Angeles. *See* LOI Response at Exhibit K and Further LOI Response at Exhibit 2.

³⁸ *See* LOI Response at 4 and *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to Worldcom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18134 ¶ 193 (1998) (citing 47 C.F.R. § 1.17 for proposition that, in light of their duty to be truthful and accurate in their representations to the Commission, statements provided by Commission licensees in response to investigatory or adjudicatory matters within the Commission’s jurisdiction are awarded substantial weight in the absence of persuasive evidence to the contrary).

³⁹ *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd. 17087, 17113 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b).

⁴⁰ *See* 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

⁴¹ *See id.*

⁴² In 2010, Clear Channel and its consolidated subsidiaries had revenues of more than \$5.86 billion. *See* United States Securities and Exchange Commission Form 10-K, Annual Report, Clear Channel Communications, Inc. (2010) at 26. Therein, Clear Channel noted that it is the “largest radio broadcaster in the United States (based on continued....)

rules⁴³ warrant a proposed forfeiture above the base amount. We also note that six radio stations participated in the contest at issue. Accordingly, the instant case warrants an upward adjustment from the base forfeiture amount. After considering all the foregoing factors, and in view of the particular facts of this case, we find that Clear Channel is apparently liable for a forfeiture in the amount of twenty two thousand dollars (\$22,000).⁴⁴ In view of today's action, and in light of Clear Channel's prior history of non-compliance, we caution that the imposition of even higher forfeitures may result in the future if such misconduct persists.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Act,⁴⁵ and sections 0.111, 0.311, and 1.80 of the Commission's rules,⁴⁶ that Clear Channel Communications, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty two thousand dollars (\$22,000) for apparently willfully and repeatedly violating section 73.1216 of the Commission's rules.

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, Clear Channel Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account number and FRN number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, Missouri 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for payment of the full amount under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment (Continued from previous page) _____

revenues). As of December 31, 2010, [it] owned 892 domestic radio stations servicing approximately 150 U.S. markets, including 47 of the top 50 markets and 89 of the top 100 markets." *Id.* at 1-2.

⁴³ See, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Licensee of Station WRUM(FM), Orlando, Florida, Notice of Apparent Liability, 21 FCC Rcd 6808 (Enf. Bur. Investigations & Hearings Div. 2006) (imposing a \$6,000 forfeiture for failure to conduct a contest as announced and advertised) (forfeiture paid); see also *AMFM Broadcasting*, 24 FCC Rcd 1529 (Enf. Bur. Investigations & Hearings Div. 2009) (imposing a \$6,000 forfeiture for failure to conduct a contest on KOST(FM) as announced and advertised) (forfeiture paid); *Clear Channel Broadcasting*, 15 FCC Rcd 2734 (Enf. Bur. 2000) (imposing \$4,000 forfeiture for failure to disclose a material term of the contest); *Capstar TX Limited Partnership*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636 (Enf. Bur. Investigations & Hearings Div. 2005) (forfeiture paid); *Citicasters, Co.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16612, 16613-14 (Enf. Bur. 2000).

⁴⁴ See *id.* As noted above, Clear Channel has violated our contest rule multiple times.

⁴⁵ See 47 U.S.C. § 503(b).

⁴⁶ See 47 C.F.R. §§ 0.111, 0.311, and 1.80.

procedures. Clear Channel will also send electronic notification on the date said payment is made to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Kenneth.Scheibel@fcc.gov, and Amelia.Brown@fcc.gov.

13. The response, if any, must be mailed to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C330, Washington, D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Kenneth.Scheibel@fcc.gov, and Amelia.Brown@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that the Complaint in this proceeding **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.⁴⁷

16. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class Mail and Certified Mail-Return Receipt Requested, to Clear Channel Communications, Inc., 2625 S. Memorial Drive, Suite A, Tulsa, Oklahoma 74129; and to Andrew W. Levin, Executive Vice President and Chief Legal Officer, Clear Channel, 200 East Basse Road, San Antonio, Texas 78209-8328.

FEDERAL COMMUNICATIONS COMMISSION

Theresa Z. Cavanaugh
Acting Chief, Investigations and Hearings Division
Enforcement Bureau

⁴⁷ For purposes of the forfeiture proceeding initiated by this *NAL*, Clear Channel Communications, Inc. shall be the only party to this proceeding.